



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

June 27, 2019

Joe Wertz  
MuckRock News  
DEPT MR 56586  
411A Highland Ave  
Somerville, MA 02144-2516

Re: Freedom of Information Act Appeal No. EPA-HQ-2019-003446 (Request No. EPA-R6-2018-009132)

Dear Mr. Wertz:

I am responding to your February 12, 2019 Freedom of Information Act (FOIA) appeal. You appealed the November 14, 2018 decision of James McDonald, Assistant Regional Administrator for Management (decision) of the U.S. Environmental Protection Agency (EPA or Agency) to deny in part the FOIA request you submitted to EPA on June 29, 2018. Your request sought:

Copies of all email communications regarding the development of a Total Maximum Daily Load, also known as a TMDL, in the Illinois River Watershed or impaired water bodies in Arkansas and Oklahoma sent or received from June 1, 2017 to the date that this FOIA request is processed.

The decision stated that records responsive to your request were uploaded into the FOIAonline system, but that some of the responsive records were withheld in full because the documents were exempt from disclosure under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5) – the Deliberative Process Privilege. Specifically, 13 records were withheld under Exemption 5.

I have carefully considered your request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, granted in part and denied in part.

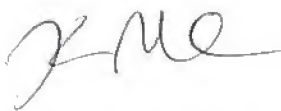
Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Exemption 5 of the FOIA protects from disclosure a record, or portion of a record, that is subject to the deliberative process privilege. The deliberative process privilege protects documents that are both pre-decisional and deliberative. The withheld documents include draft agreements, proposed action plans, draft communications plans, and draft summary reports related to the Illinois River Watershed. The documents also include emails discussing options for proceeding with the related actions.

The documents that are withheld are protected by the deliberative process privilege because they reflect the internal discussions, advice, and recommendations that were considered during EPA's decision-making process related to actions concerning the Illinois River Watershed. Release of the withheld material would discourage open, frank discussions on matters of policy between subordinates and superiors, prematurely disclose proposed policies before they are finally adopted, and cause public confusion by disclosing reasons and rationales that were not in fact ultimately the grounds for EPA's actions. However, I have determined that two withheld documents contain reasonably segregable information that may be released. A copy of that material will be released to you as well. The remaining material is exempt from disclosure under Exemption 5 of the FOIA.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, 202-741-5770 or 1-877-684-6448; and fax, 202-741-5769.

Should you have any questions concerning this matter, please contact Kathryn Le at [le.kathryn@epa.gov](mailto:le.kathryn@epa.gov) or (202) 564-7701.

Sincerely,



Kevin M. Miller  
Assistant General Counsel  
General Law Office

cc: *James McDonald*, Assistant Regional Administrator for Management  
*Nancy Ho*, Region 6 FOIA Officer